IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 383 of 1993.

Date of decision: 20-12-2007.

State of H.P. Appellant.

Versus-

Chand Ram. Respondent.

Coram

Hon'ble Mr. Justice Surjit Singh, J.
Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Mr. Som Dutt Vasudeva, Additional Advocate General .

For the respondent: Shri Rakesh Jaswal, Advocate.

Surjit Singh, J. (oral).

This appeal by the State is directed against the judgment of Sessions Court whereby the respondent who was sent up for trial for offences punishable under Sections 302 and 201 of the Indian Penal Code, has been acquitted.

Respondent was alleged to have murdered his daughter-in-law named Parja Devi on 23-9-1992 by hitting her with a Danda and to have thrown the dead body into a khud. Matter was reported to the Police by Shri Lachhmi Dhar (PW1) Pradhan of the Panchayat vide written application Exhibit-PA. As per this application, two persons named Balu Ram and Sali Ram visited Lachhmi Dhar (PW1) on 23-9-1992 at about 1.20 a.m. (in the night) and told him that the deceased had jumped into the khud and her dead body had been found in that very khud. Prem Lal (PW17), Inspector/S.H.O., Police Station Sarkaghat went to the spot and conducted the inquest. He prepared the report Exhibit PW17/A per

[1] Whether reporters of the Local papers are allowed to see the judgment?

which there were no external injuries on the dead body. Dead body was sent to the Referral Hospital, Sarkaghat where Dr. R.S. Jamwal (PW6) conducted the post mortem examination and found as many as eight injuries, detail where of is given herein below:

> "1. Injury on face. The whole of the face and neck was conjusted with echimosis, bluish grey was present on the face. Bloody discharge from the mouth and both the nostrils. Both eyes were protruding, Olivier conjunctive conjunction and haemotama was present, grayish black in colour. Bloody discharge from inner canthus of right eye was present. Pupils dilated, by laterally, cornea was hazy, no bleeding from the ears.
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> 2. Patterned abrasion (impact) was present, 5 cm below the right eye over the right side of the face extending up to the tip of the nose, reddish brown scab was covering the abrasion, size 6 x 3 cm linear underlying bones were normal.
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> 3. Contusion was present on the right hypochondria size 7 x 3 cm, bluish black in colour. There was localized swelling of soft tissues with extravasions coagulation and infiltration of tissues with blood and colour changes.
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> 4. Patterned impact abrasion 5 cm above the right ankle joint, width 3 cm, circumferential all round the leg reddish brown, thick parchment like covered with scab (patent ligature mark).
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> 5. Patterned abrasion 4. 5 cm above the left ankle joint, width 3 cm, circumferential all around the lower leg, reddish brown parchment like, injury No.4 and 5 were stereotype injuries.

6. Patterned abrasion 5 cm above the upper border of left poplipeal fessa width 4 cm circumferential injury.

7. Injury stereotype as No.6 on the lower right thigh.

8. Injury on the forehead which was contusion over the middle of forehead along the hair line, which was of size 4 x 5 cm, pits on pressure, swelling and damage to epithelium with extravasations and coagulation and infiltration of the tissues with blood and colour changes (bluish black), Aponeurosis slit and skull walt open. There was a conical haematoma in the front parietal region both sides, size 15 x 5 cm. was extensive with infiltration of both the orbits (extradural) with rupture of anterior athemodal vessels. Dura was detached from the skull bone. No fracture of the overlying bones. Spine was normal".

According to the Doctor, all the injuries were ante mortem and were sufficient in the ordinary course of nature to cause death. Dr. also found water in the lungs. Respondent in his statement, under Section 313 of the Code of Criminal Procedure, denied having killed the deceased. Prosecution did not examine Balu Ram and Sali Ram, the two persons, who allegedly went to Lachhi Dhar (PW1) and Krishan Chand (PW2) and told them that the deceased had jumped into the khud.

Trial Court acquitted the respondent holding that the opinion of the Doctor that the injuries were ante mortem appeared to be incorrect in the face of the testimony of Inspector Prem Lal (PW17) to the effect that there were no external marks of injuries on the dead body and also in view of the fact that there was a suicide note Exhibit PB, relied upon by the prosecution itself, per which the deceased had taken her life, because of her having committed theft of anklets from the house of a third person and it having been established that she was the thief.

We have heard learned Additional Advocate General and gone through the record.

It is not only the inquest report which indicates that there were no external injuries on the dead body but also the photographs of the dead body, particularly the photograph Exhibit P-22 which give a lie to the testimony of the Doctor about the injuries being ante mortem, at least with regard to the injuries on the face including one injury below the eye because in the photograph, we see no injury on the face, including an injury any-where near any of the two eyes. We also find from the testimony of Dr. R.J. Jamwal (PW6) as also the post mortem report Exhibit PW6/A that there was water in the lungs of the dead body. When questioned about the presence of water in the lungs, in the cross-examination by the accused, the witness told that water can enter the lungs of the dead body if it (the dead body) is kept in two meter deep water for twenty hours. In the present case, the dead body could not have been in water for twenty four hours. The dead body was spotted on 23-9-1992 at 1.20 a.m. (in the night) per report Exhibit PA made to the Police by Lachhi Dhar (PW1) the Pradhan of the Panchayat. The deceased was taken by the respondent, her father-in-law, to her parents' place on 22-9-1992. He complained that she had committed theft of Panjeb (anklets) and sold the stolen Panjeb to a goldsmith and the same day, the respondent returned along with the deceased to his village. That means on 22-9-1992 and most probably till the evening, the deceased was alive. Her dead body was found outside the running stream of water in the khud at a distance of twenty feet on 23-9-1992 which means the dead body did not remain submersed in the water for twenty hours and, therefore, it cannot be said that the water entered the lungs of the deceased after her death. If it is so, the prosecution version that the deceased was done to death and then her dead body was thrown into the khud is doubtful. Instead the version given to the Police, vide report Exhibit PA, by Lachhi Dhar (PW1) appears to be probable because the presence of water in the lungs is indicative of death by drowning. Not only this, there is a writing, Exhibit PB, in

the hand of the deceased. As per this writing, which is in the form of a suicide note, the deceased was ashamed of her act of committing the theft and the act having become public and for this reason, she had taken her life. The prosecution did not examine Balu Ram and Sali Ram who reported to Lachhi Dhar (PW1) the Pradhan of Gram Panchayat and Krishan Chand (PW2) the Numberdar that the deceased had jumped into the khud and her dead body was lying in the khud itself. No explanation, whatsoever, has been offered for with-holding these two important witnesses. Hence the prosecution is liable to adverse inference to the effect that had they been produced and examined, they would have stuck to the earliest version, recorded in Exhibit PA, that the deceased had jumped into the river to commit suicide.

For the foregoing reasons, we see no merit in the appeal. The same is, therefore, dismissed.

(Surjit Singh),
Judge.

(Surinder Singh),
Judge.

December 20, 2007.
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